Supreme Court, U.S.
FILED

No. _____ 951755 APR 29 19

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In The

Supreme Court of the United States

October Term, 1995

FABRICACION METALICA
DE MATAMOROS, S.A. DE C.V.,

Petitioner,

vs.

DANIEL HERNANDEZ, ROSA PALACIOS,
RUMALDO HERNANDEZ, and SYLVA HERNANDEZ,
Individually and on Behalf of the
Estate of MARIA SOLEDAD SILVA,

Respondents.

Petition For Writ Of Certiorari
To The Fifth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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38 pp

QUESTIONS PRESENTED

i. Does an out-of-forum negligent act resulting in injurious consequences within the forum constitute a contact with the forum for purposes of minimum contacts due process analysis?

ii. Does introduction of goods into the stream of commerce knowing the goods will enter a forum and will be transported by common carrier in the forum by itself constitute purposeful acceptance of the benefits and protections of the laws of the forum or an act purposefully directed at the forum particularly when the goods cause no injury within the forum?

PARTIES

Fabricacion Metalica De Matamoros, S.A. De C.V. (Petitioner).

Kawasaki Steel, Mitsubishi Corporation, Mitsubishi International, River Steel LTD, Inc. (Parents and Subsidiaries of Petitioner)

Daniel Hernandez, Rosa Palacios, Rumaldo Hernandez, and Sylva Hernandez, individually and on behalf of the estate of Maria Soledad Silva) (Respondents)

Melton Truck Lines (Nonpetitioning Defendant).

Ben Azua, Fabricacion Technologia De Mexico, and Mc Fabrication Industries, Inc. (Former Defendants)

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PETITION FOR WRIT OF CERTIORARI

Fabricacion Metalica De Matamoros, S.A. De C.V. ("Petitioner" or "FAMSA") respectfully asks for issuance of Writ of Certiorari for review of the judgment of the Fifth Circuit entered on December 20, 1995 and the subsequent denial of Petition for Rehearing on January 29, 1996.

OPINIONS BELOW

The United States District Court, Southern District of Texas, Brownsville Division denied Petitioner's Motion to Dismiss for Want of Personal Jurisdiction and then certified the issue for interlocutory appeal under 28 U.S.C. 1292. The Fifth Circuit Court of Appeals granted interlocutory appeal, affirmed the District Court, and denied Petition for Rehearing.

JURISDICTION

The Fifth Circuit entered its judgment on December 20, 1995 and denied Petitioner's Petition for Rehearing on January 29, 1996. Jurisdiction exists under 28 U.S.C. 1254 by certiorari on petition from the Fifth Circuit Court of Appeals. This case was before the Fifth Circuit Court of Appeals on interlocutory appeal by certification. 28 U.S.C. 1292.

CONSTITUTIONAL PROVISION

. . . No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . *Fourteenth Amendment, United States Constitution.*

STATEMENT OF THE CASE

Petitioner operates and is incorporated solely in Mexico. It sells and transports its product to mid-bridge at the border. It has no control or ownership of its product past mid-bridge at the border. On the other hand, it communicates with customers in Texas, it purchases goods and services in Texas, and it has a P.O. Box in Texas. Some of its employees live in Texas.

This litigation arises from a truck accident just inside the Texas border just past mid-bridge. Petitioner's product was passive cargo in the back of the truck and played no role in the accident. Petitioner did not transport its product to the border itself. An independent contractor transported it to the border. Petitioner did not own or operate the truck in the accident.

No relationship existed between Petitioner and the independent contractor other than contracts for trucking services. Petitioner's contracts with the independent contractor were negotiated solely in Mexico. Allegedly, Petitioner negligently hired the independent contractor.

Nothing done by Petitioner in Texas caused the truck accident. The only connection between the truck accident and Petitioner is that Petitioner's product sat passively in the back of the truck during the accident. Any negligence

by Petitioner occurred solely in Mexico, where Petitioner allegedly negligently hired the independent trucking contractor.

The district court had subject matter jurisdiction based on diversity. Petitioner filed a motion to dismiss for want of personal jurisdiction. The district court denied the motion. It found that specific personal jurisdiction existed. The Fifth Circuit affirmed.

Petitioner believes specific personal jurisdiction does not exist, because the claims at issue did not arise from or relate to any relevant contact by Petitioner with Texas. Rather, the claims arise from and relate to only alleged negligence by Petitioner in Mexico.

Petitioner denies having any relevant contacts with Texas for purposes of personal jurisdiction minimum contacts analysis. However, even assuming the existence of such contacts, none of the contacts gave rise to or directly relate to the claims at issue. Any contacts are purely lawful and did not give rise or directly relate to the claims at issue. Since general personal jurisdiction is not at issue, any such general and lawful contacts have no relevance.

Finally, Petitioner did not purposefully avail itself of the benefits or protections of Texas law merely by introducing its goods into the stream of commerce into or through Texas particularly in view of the fact that its goods caused no injury in Texas.

REASONS CERTIORARI SHOULD BE GRANTED

Introduction

Significant disagreement exists over whether an act outside of the forum which causes an injurious effect inside of the forum is a contact with the forum supporting jurisdiction in the forum. If the out-of-forum act is not wrongful yet causes an important effect inside of the forum, the act probably is not a contact with the forum supporting jurisdiction in the forum. *Kulko v. Superior Court of California*, 438 U.S. 908 (1978). On the other hand, if the out-of-forum actor deliberately causes an injury inside the forum with a wrongful act, the wrongful act probably is a contact with the forum supporting jurisdiction in the forum. *Calder v. Jones*, 465 U.S. 783 (1984). However, if the out-of-forum wrongful act resulting in an injurious effect inside the forum is merely negligent not deliberate, disagreement exists over whether the out-of-forum negligent act is a contact with the forum supporting jurisdiction in the forum. The Fifth Circuit as evidenced by the case at bar holds that the out-of-forum alleged negligent act resulting in an injurious effect in the forum is a contact with the forum supporting jurisdiction in the forum. The First Circuit as evidenced by *Sawtelle v. Farrell*, 70 F.3d 1381 (1st Cir. 1995) holds the contrary. Numerous lower court cases touch on this issue and some are summarized below, but no perceivable consensus in the lower courts exists on this issue.

In addition, significant disagreement exists among the lower courts and within the Supreme Court itself over whether delivery of goods into the stream of commerce without more constitutes purposeful acceptance of the

benefits and protections of the forum's law merely because the goods enter or pass through the forum and an injurious effect occurs within the forum somehow loosely associated with the goods. *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102 (1987). In the case at bar, the Fifth Circuit as a practical matter has held that the mere placement of goods into commerce through or into the forum constitutes an act purposefully directed at the forum.[1] This is inconsistent with the plurality opinion in *Asahi Metal*. In fact, the Fifth Circuit acknowledges that it does not follow the plurality opinion in *Asahi Metal* on the ground that the plurality opinion is not a binding Supreme Court opinion. *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415 (5th Cir. 1993). The Circuit Courts vary widely on the issue of whether introduction of goods into the stream of commerce by itself constitutes purposeful acceptance of the benefits and protections of the forum's laws. This very significant area of disagreement between the circuits and within the Supreme Court itself deserves resolution by the Supreme Court. This issue has significant ramifications and consequences on both international and interstate commerce. Commerce may be deterred if participants fear submission to the jurisdiction of a forum on all claims somehow loosely associated with the goods in commerce even

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[1] Precisely, the Fifth Circuit has held that placement of goods in commerce knowing that the goods will be transported by a common carrier within the forum constitutes purposeful acceptance of the benefits and protections of the laws of the forum and an act purposefully directed at the forum. Of course, most placements of goods into commerce into or through a forum will involve use of a common carrier within the forum.

when the goods are not defective and caused no injury in the forum.

Supreme Court

In *Kulko v. Superior Court of California*, 438 U.S. 908 (1978), a New York father with custody over his daughter in New York purchased an airplane ticket for his daughter to live with her mother in California. The California Court asserted personal jurisdiction over the New York father based on his act outside California of purchasing the airplane ticket that caused an effect in California creating a need for child support in California. The Supreme Court rejected the "effects test" as a ground for California jurisdiction under the circumstances, because the New York father did not purposefully avail himself of the benefits and protections of California law by sending his daughter to California to live with her mother in California.[2]

Consistently, in *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980), an automobile accident occurred in Oklahoma as a result of alleged wrongful acts by the defendants elsewhere. Again, the Supreme Court held that no jurisdiction existed in the forum where the effects of alleged wrongful acts were suffered, among other reasons, because the defendants did not purposefully avail themselves of the protections and benefits of the law of

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[2] Certainly, if a father does not purposefully avail himself of the benefits of California law by entrusting his daughter's life and welfare to California law and order, then the petitioner in the case at bar did not purposefully avail itself of the benefits of Texas law merely by selling its steel mid-bridge at the border.

that forum. The Supreme Court recognized that potential defendants may structure their activities to avoid personal jurisdiction of a forum. Further, it recognized that foreseeability of injury in the forum without more is not sufficient for jurisdiction.[3]

On the other hand, in *Calder v. Jones*, 465 U.S. 783 (1984), defendants deliberately wrote and approved a defamatory story in Florida about a California plaintiff knowing the story would be distributed in California. The Supreme Court held that the California Court had jurisdiction over the Florida defendants, because the Florida defendants deliberately engaged in tortious activity in Florida knowing it would have an injurious effect in California. The Supreme Court specifically noted that the defendants were not charged with "untargeted negligence" rather their "intentional, and allegedly tortious, actions were expressly aimed at California." Thus, if the Florida defendants had merely been guilty of "untargeted negligence," the California court may not have had jurisdiction over them. The lower Courts have generally interpreted *Calder v. Jones* narrowly limiting it closely to its facts.

In *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102 (1987), four justices agreed that mere placement of goods into the stream of commerce without more does not support jurisdiction even when the goods cause injuries within the forum. Specifically, a defendant does not purposefully avail himself of the laws

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[3] The 5th Circuit apparently reads *World-Wide Volkswagen* differently, though. *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415 (5th Cir. 1993).

and benefits of a forum or purposefully direct its actions toward the forum merely by introducing goods into the stream of commerce even when the goods cause injuries in the forum regardless of whether the defendant is aware that the stream of commerce may or will sweep the goods into the forum.[4] Thus, certainly, when the goods do not cause injuries in the forum, even more so, mere placement of the goods in the stream of commerce by a defendant does not mean that the defendant purposefully availed himself of the laws and benefits of the forum or purposefully directed an act at the forum.

First Circuit

In *Sawtelle v. Farrell*, 70 F.3d 1381 (1st Cir. 1995), New Hampshire plaintiffs filed suit against nonresident attorneys for legal malpractice in recommending an inadequate settlement. The nonresident attorneys had filed a wrongful death lawsuit in Florida arising from an aircraft accident over the New Hampshire-Vermont border. The nonresident attorneys delivered a retainer agreement to New Hampshire for signature by the plaintiffs, made numerous phone calls to plaintiffs in New Hampshire,

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[4] The substantial connection between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum state. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state . . . [A] defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state.

and wrote at least 15 letters to plaintiffs in New Hampshire. Most importantly, according to plaintiffs, the defendants negligently directed settlement advice to them in New Hampshire (by telephone and mail) causing them to rely on that advice and thereby suffer economic loss in New Hampshire.

The First Circuit found defendants not subject to personal jurisdiction in New Hampshire based on insufficient contacts, because the allegedly negligent conduct in question occurred outside New Hampshire. The Court focused on where the allegedly negligent conduct occurred not where it was communicated or where it caused injury. The Court recognized that the alleged injury was not complete until the allegedly negligent advice was communicated to New Hampshire and relied upon in New Hampshire. Nevertheless, the Court found that "the gravamen of the Sawtelles' claim is that they suffered in New Hampshire the 'effects' of the defendants' negligence committed elsewhere."

Thus, according to the First Circuit, the issue is where the alleged negligence occurred *not* where its effects were suffered. Certainly, following the First Circuit's reasoning, it follows that no personal jurisdiction exists in Texas over the Petitioner at bar, because any negligent hiring occurred solely in Mexico. Without dispute, no alleged negligence occurred in Texas. At most the effects of the alleged negligence were suffered by plaintiffs in Texas. In conclusion, the First Circuit's opinion in *Sawtelle* is inconsistent with the Fifth Circuit's opinion in the case at bar, because the First Circuit looks solely to the location of the negligence not to where its effects are suffered in determining relevant contacts.

Fifth Circuit

In *Great Western United Corp. v. Kidwell*, 577 F.2d 1256 (5th Cir. 1978), rev'd on other grounds, 443 U.S. 173 (1979), the Fifth Circuit in upholding jurisdiction by a District Court in Texas over Idaho state officials broadly states: "Minimum contacts, however, need not arise from actual physical activity in the forum state; activities in other forums with foreseeable effects in the forum state will suffice."[5] The Fifth Circuit then held that the Idaho state officials had relevant contacts with Texas because their efforts in Idaho to enforce Idaho law relating to takeovers had foreseeable effects on a Texas corporation. Thus, the Fifth Circuit held that actions outside the forum with foreseeable significant consequences inside the forum may support jurisdiction. Further, the Fifth Circuit said: "very little purposeful activity [in the forum] is necessary." If the Fifth Circuit is right, then no need exists for the current complex conceptual framework based primarily on minimum contacts. It could be replaced by a much simpler conceptual framework grounded almost exclusively on "foreseeable consequences."

In *Wilson v. Belin*, 20 F.3d 644 (5th Cir. 1994), the Fifth Circuit seemed to agree with *Sawtelle* to an extent when it said citing *World-Wide Volkswagen*: "That the tort is deemed to have occurred in whole or in part in Texas is

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[5] This language appears directly inconsistent with *World-Wide Volkswagen*, 444 U.S. 286 (1980) decided by the Supreme Court two years later. However, as previously noted, the Fifth Circuit appears to interpret *World-Wide Volkswagen* differently. *Ruston Gas Turbines, Inc. v. Donaldson*, 9 F.3d 415 (5th Cir. 1993).

simply not dispositive of whether jurisdiction is appropriate." Thus, the Fifth Circuit recognized that the place of occurrence of the tort such as the place where the injury occurs is not the proper focus. Rather, the proper focus is the defendant's relevant contacts with the forum either substantial and continuous contacts for general jurisdiction or limited contacts giving rise or directly relating to the claim for specific jurisdiction. Further, the Fifth Circuit in *Belin* recognized that foreseeability is not a determinative issue. Thus, the mere fact that the defendant may foresee injury in the forum does not control. Rather, again, the minimum contacts conceptual framework controls.

However, consistent with *Kidwell*, in the case at bar, the Fifth Circuit held that the alleged negligent hiring of a trucking firm which occurred solely in Mexico amounted to a contact with Texas for purposes of minimum contacts analysis and this contact gave rise to plaintiff's claim, on the ground that the alleged negligence allegedly caused injury within Texas. Further, the Fifth Circuit held that the shipment of the goods to mid-bridge at the Brownsville border amounted to a purposeful acceptance of the benefit of doing business in Texas with the common carrier that ultimately would transport the goods to their ultimate destinations.[6] In effect, the Fifth

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[6] The Fifth Circuit did not focus on the fact that the petitioner did not own or deliver the goods past mid-bridge and did not hire any trucking company to transport the goods in or through Texas (only to mid-bridge). As stated by Tom Arce in his affidavit attached to petitioner's request for reconsideration: "FAMSA always sold its product . . . with delivery mid-bridge. FAMSA had no control over the product after it passed mid-

Circuit held that mere introduction of goods into the stream of commerce supports jurisdiction in the forum where injury somehow loosely associated with the goods occurs, even when the defendant does not own the goods in the forum and the goods cause no injury in the forum. In essence, according to the Fifth Circuit, by putting the goods into the stream of commerce, the Petitioner has both purposefully availed itself of the benefits and protections of the forum into or through which the goods pass and made contact with the forum for purposes of minimum contacts analysis. Further, jurisdiction will exist in the forum over any claims somehow loosely associated with the goods even though the goods caused no injury in the forum (only acts outside the forum allegedly caused injury in the forum).

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bridge. FAMSA's product was never owned by FAMSA past mid-bridge." Admittedly, some evidence in the record does refer to shipment of the goods "into Texas" without making the point that FAMSA shipped the goods only to mid-bridge. Further, the Fifth Circuit seems to assume that FAMSA contracted with Melton Trucking Company (the trucking company transporting the goods from Brownsville to their ultimate destinations). However, Tom Arce in his affidavit attached to Melton Trucking Company's motion for summary judgment states: "No contracts exist, or have ever existed, between Melton Truck Lines, Inc. and FAMSA with respect to the manufacture, sale, or transport of any product manufactured by FAMSA." FAMSA did not purposefully avail itself of the privilege of doing business with Melton Trucking Company in Texas. FAMSA shipped its product to mid-bridge on Autotransportistas.

District Court Opinions

In *Jackson v. Shephard,* 609 F.Supp. 205 (D. Arizona 1985), the California defendant allegedly negligently failed to give plaintiff medical treatment in California. Plaintiff suffered injuries from this negligence in Arizona. The injuries in Arizona did not create jurisdiction in Arizona. The Court looked to the physical location of the negligence not to the location where the injuries resulting from the negligence were suffered by plaintiff.

In *Colorado River Water Conservation District v. Andrus,* 476 F.Supp. 966 (D. Colo. 1979), defendant wrongfully put fish in the river outside the forum. The fish entered the forum and caused damage. The defendant's out-of-forum acts did not create jurisdiction.

In *McDaniel v. Joseph,* 409 F.Supp. 1003 (W.D. Pa. 1976), the defendant engaged in an improper out-of-forum relationship with plaintiff's spouse. This caused plaintiff injuries within the forum. The out-of-forum wrongful acts did not support jurisdiction.

Conclusions

Significant disagreements exist over whether out-of-forum negligent acts with in forum injurious effects without more are contacts with the forum for purposes of minimum contacts analysis. In addition, significant disagreements exist over whether introduction of goods into the stream of commerce without more constitutes purposeful acceptance of the benefits and laws of the forum or an act purposefully directed at the forum especially when the claim is only somehow loosely associated with

the goods and the goods themselves do not cause any injurious effects in the forum (alleged negligent acts outside the forum cause the injurious effects). These disagreements deserve Supreme Court resolution. The ramifications and consequences of these issues on international and interstate commerce are tremendous including possible deterence of international and interstate commerce due to participants in commerce being fearful of subjecting themselves to jurisdiction in a forum on all claims somehow loosely connected with the goods in commerce even when the goods have caused no injury in the forum (alleged negligent acts outside the forum cause the injury).

In the case at bar, Petitioner committed no wrongful act in Texas giving rise or directly related to a claim. Petitioner, in fact, denies acting within Texas at all. However, even assuming that Petitioner acted in Texas, its actions in Texas did not give rise to and are not directly related to a claim. Further, since only specific jurisdiction is at issue, any acts by Petitioner in Texas not giving rise or directly related to the claims at issue have no relevance. The question is whether the alleged negligent act by Petitioner outside Texas (negligent hiring of a trucking company in Mexico to transport goods to mid-bridge at the border) constitutes a contact with Texas sufficient to give rise to jurisdiction in Texas merely because the alleged negligent act allegedly caused injury within Texas. First, the alleged negligent act in Mexico under *Sawtelle* is not a relevant contact with Texas regardless of whether it caused injurious effects in Texas. Second, Petitioner did not purposefully avail itself of the benefits or protections of Texas law and did not purposefully direct

any action towards Texas as per the plurality opinion in *Asahi Metal*. The mere act of shipping goods to midbridge at the border is not a relevant contact with Texas for purposes of minimum contacts analysis. Further, any negligence in Mexico in hiring a trucking firm is not a relevant contact with Texas for purposes of minimum contacts analysis. Further, placement of goods in commerce knowing that the stream of commerce will carry the goods into Texas is not an act purposefully accepting the privileges of doing business in Texas and is not an act purposefully directed at Texas. The bottom line is that no relevant contact by Petitioner with Texas exists sufficient to give rise to jurisdiction.

PRAYER

This Court should grant certiorari, because a conflict exists between the First Circuit as represented by *Sawtelle v. Farrell*, 70 F.3d 1381 (1st Cir. 1995) and the Fifth Circuit as represented by this case. Further, a conflict exists between the Fifth Circuit as represented by both by this case and *Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415 (5th Cir. 1993) and the plurality opinion in *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102 (1987). Further, a conflict exists within this Court as represented by the nonexistence of a majority opinion in *Asahi Metal v. Superior Court of California*. The legal issues involved in this case have widespread and important ramifications, and they are interesting. Further, clarification of the law by the Supreme Court is needed, so both litigants and the lower Courts will know when an

out-of-forum negligent act resulting in injurious consequences within the forum constitutes a contact with the forum for purposes of minimum contacts due process analysis and so they will know when specific jurisdiction arises from products placed in the stream of commerce into or through a forum both when the products cause injury in the forum and when the products – as in this case – do not cause injury yet an injury somehow loosely associated with the products occurs in the forum. Petitioner respectfully asks the Court to grant certiorari to address these issues.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40080

DANIEL HERNANDEZ, ET AL.,

Plaintiffs-Appellees,

versus

MELTON TRUCK LINES, INC., ET AL.,

Defendants,

FABRICACION METALICA DE MATAMOROS, S.A. DE C.V.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(B-91-CV-202)

(Filed Dec. 20, 1995)

Before REAVLEY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Fabricacion Metalica de Matamoros (FAMSA) appeals the denial of its motion to dismiss for lack of personal jurisdiction. Because we conclude that this action arose out of a FAMSA contact with the forum state (Texas), therefore vesting specific jurisdiction, we **AFFIRM.**

I.

This wrongful death action arises out of a collision in 1990 in Brownsville, Texas, in which a tractor-trailer transporting 21 pallets of FAMSA's steel plate collided with the automobile in which the decedent was a passenger. The complaint claims (1) that the collision was caused by the negligent driving of Roberto Hernandez Uresti, who neither understood nor heeded Texas traffic laws; and (2) that FAMSA was negligent in hiring Uresti, in that FAMSA knew, or should have known, that he was incompetent to safely drive FAMSA's cargo into Texas, and failed to inquire reasonably about his capabilities.

The complaint alleges that FAMSA, located in Matamoros, Mexico, contracted with Melton Truck Lines, an Arkansas company, to ship FAMSA's steel to Decatur, Illinois; that FAMSA and Melton agreed that Melton would supply the trailer, but Melton did not agree to

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

transport the cargo from Mexico; that, therefore, FAMSA contracted with another entity to transport the Melton trailer, loaded with the FAMSA cargo, from the FAMSA facility in Mexico to the Melton facility in Brownsville; that Melton was to then transport the trailer to Illinois; that FAMSA hired Arturo Guerra d/b/a Autotransportistas de Matamoros to provide the tractor and driver to transport the Melton trailer from FAMSA's facility in Mexico to Melton's facility in Brownsville; that, in accordance with the agreement, Guerra's employee, Uresti, pulled the Melton trailer from Brownsville to the FAMSA facility in Mexico, where it was loaded with the FAMSA cargo, and then pulled the trailer back into Texas for FAMSA and Melton; and that, when the collision occurred in Brownsville, Uresti was en route to the Melton facility there.

FAMSA claims that it is incorporated in Mexico and does not have an agent for service of process in Texas. FAMSA admitted in district court that, in order to avail itself of the services of Melton Truck Lines, FAMSA hired Guerra's company to deliver the cargo to the Melton facility, located in Texas.

FAMSA moved to be dismissed for lack of personal jurisdiction. The district court denied the motion.[2]

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[2] Pursuant to 28 U.S.C. § 1292 (b), this court may review district court interlocutory orders when that court permits such an appeal and leave to appeal is granted by our court. *United States v. Bear Marine Serv.*, 696 F.2d 1117, 1118 (5th Cir. 1983). Along that line, the parties were directed to brief whether this litigation would be materially advanced by this interlocutory appeal. We are satisfied by FAMSA's explanation that the

II.

We review the denial of a motion to dismiss for lack of personal jurisdiction *de novo*, taking as true uncontroverted allegations in the plaintiff's complaint and resolving in plaintiff's favor factual conflicts in the parties' affidavits. *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir.), *cert. denied*, ___ U.S. ___, 115 S. Ct. 322 (1994). (As noted, Hernandez has not filed a brief in this court.) When a defendant challenges personal jurisdiction, the plaintiff bears the burden of establishing a *prima facie* case for it. *D.J. Investments, Inc. v. Metzeler Motorcycle Tire Agent Gregg, Inc.*, 754 F.2d 542, 545 (5th Cir. 1985).

In general, a federal court exercises *in personam* jurisdiction over nonresidents "pursuant to the law of the state in which the federal court is located". Fed. R. Civ. P. 4(e). Thus, the district court could exercise only that jurisdiction that a Texas state court would be empowered to exercise under the same circumstances. *See Bullion v. Gillespie*, 895 F.2d 213, 215 (5th Cir. 1990). The Texas long-arm statute has been construed to reach to the full extent permitted by due process.[3] Therefore, at issue is whether the exercise of personal jurisdiction over FAMSA comports with due process; that is, whether FAMSA has purposefully availed itself of the benefits and protections of Texas by establishing minimum contacts with Texas,

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termination of this multi-defendant action would be hastened by removing FAMSA from it. (Hernandez did not file a brief.)

[3] The Texas long-arm statute has been construed by the Texas Supreme Court to reach as far as constitutionally permissible. *See Schlobohn v. Shapiro*, 784 S.W.2d 355, 357 (Tex. 1990).

and if so, whether such exercise of jurisdiction would offend traditional notions of fair play and substantial justice. *Wilson v. Belin*, 20 F.3d 644, 647 (5th Cir. 1994).

A defendant's contacts may support exercise of personal jurisdiction by supplying a basis for either specific or general jurisdiction. *Id.* As stated, if the defendant's contacts support the exercise of either of these two types, we must then decide whether that exercise is fair, considering several factors, including both the burden of requiring the defendant to defend a suit in a foreign forum and the interest of the forum state in exerting its jurisdiction over the defendant. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113 (1987) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

A.

The district court ruled that this action arose out of FAMSA's contacts with Texas and that, consequently, specific jurisdiction was proper. Specific jurisdiction is that which is proper "in a suit arising out of or related to the defendant's contacts with the forum". *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 414 n.8 (1984). A foreign defendant's single or isolated activities in a state, while normally insufficient to subject the defendant to suit on an action *unconnected* with those contacts, will, on the other hand, suffice to support exercise of specific jurisdiction in an action arising out of those activities. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

In district court, the plaintiffs articulated the following contacts in support of personal jurisdiction: FAMSA's manufacture of parts to be shipped to the United States in

the month of the accident; FAMSA's manufacture of parts to be shipped through Texas via co-defendant Autotransportistas de Matamoros; FAMSA's manufacture of parts for delivery to Caterpillar, Inc., at various locations in the United States; FAMSA's contracts with Texas corporations to manufacture parts; solicitation, and conduct, of business in the United States by FAMSA's president; and shipment of FAMSA's products into the United States approximately 800 times in 1990 (the year of the collision).[4]

Several of these contacts are not relevant for establishing specific jurisdiction, because they are not contacts with Texas, but rather with the United States generally.[5] We conclude, however, that one of the contacts is sufficient for specific jurisdiction.

When FAMSA hired Guerra (Autotransportistas de Matamoros) to transport the FAMSA cargo from Mexico to Melton's Texas location, FAMSA directed an activity, the hauling of its cargo by Guerra's driver, into Texas,

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[4] In response to requests for admissions, FAMSA admitted these facts (with the exception that it denied that its president solicited or conducted business in the United States).

In concluding that specific jurisdiction was proper, the district court relied upon FAMSA's manufacture of parts which were shipped through Texas, contacting companies in Texas regarding these parts, and soliciting and conducting business in the United States.

[5] Rule 4 requires federal courts to look to the laws of the state of their location to establish personal jurisdiction. Contacts with the United States do not establish jurisdiction under Texas law, nor could they, consistent with due process. Therefore they do not advance jurisdiction over FAMSA in Texas.

and by so doing, FAMSA availed itself of the benefit of transacting business with the Melton trucking company, which operated from a Texas location. We hold that, because the collision is claimed to be a direct result of FAMSA's negligent hiring of Guerra's driver, who was to complete this task in Texas, the contact with Texas is one from which this action arose.

B.

Because we find sufficient contacts, we consider next whether the exercise of jurisdiction offends "traditional notions of fair play and substantial justice". *Asahi*, 480 U.S. at 113. As noted, *Asahi* instructs us to consider, as factors for this second prong of personal jurisdiction analysis, the burden on the defendant to defend the case in a foreign court, the interests of the forum state, and the plaintiff's interest in obtaining relief. *Id.*

Among other obvious factors, the close proximity of FAMSA's location in Matamoros, Mexico, and the fact that many of its employees have business addresses in Brownsville[6] suggest that the burdens associated with FAMSA defending a lawsuit in Texas are extremely minimal. But, even assuming *arguendo* that FAMSA faces a burden in defending itself in a foreign nation's legal system, we recognize also that, "[w]hen minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will

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[6] FAMSA admits to those addresses, but states that the maintenance of those addresses is not for the purpose of fulfilling FAMSA duties.

justify even the serious burdens placed on the alien defendant". *Id.* at 114.

The plaintiffs' interest in recovery for the death of a family member, and Texas' interest in providing its residents with a convenient forum in which to litigate responsibility for traffic fatalities that occur within its borders are obviously quite substantial. In sum, the exercise of personal jurisdiction is not unreasonable.

IV.

For the foregoing reasons, the denial of FAMSA's motion to dismiss for lack of *in personam* jurisdiction is

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-00241
USDC No. CA B-91-202

DANIEL HERNANDEZ, ET AL.,

Plaintiffs-Respondents,

versus

MELTON TRUCK LINES, INC., ET AL.,

Defendants,

FABRICACION METALICA DE MATAMOROS, S.A. DE C.V.,

Defendant-Petitioner.

Petition for Leave to Appeal an
Interlocutory Order

(Filed Jan. 30, 1995)

Before DUHE, WIENER and STEWART, Circuit Judges.

BY THE COURT:

The petition of Fabricacion Metalica de Matamoros, S.A. De C.V. for leave to appeal the district court's interlocutory order of November 24, 1993, as amended by order of November 7, 1994, denying the defendant-petitioner's motion to dismiss for lack of personal jurisdiction, is GRANTED. For the benefit of the merits panel of this court, we direct the parties to include in their briefs argument whether this appeal meets the material

advancement criterion of 28 U.S.C. § 1292(b). *See United States v. Bear Marine Services*, 696 F.2d 1117, 1119-20 & ns.5&6 (5th Cir. 1983).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-40080

DANIEL HERNANDEZ; ROSA PALACIOS; RUMALDO HERNANDEZ; SYLVIA HERNANDEZ; MARIA SOLEDAD, Estate of Maria Soledad Silva

Plaintiffs-Appellees

v.

MELTON TRUCK LINES INC; BEN AZUA; MC FABRICATION INDUSTRIES INC; FABRICATION TECHNOLOGIA DE MEXICO

Defendants

and

FABRICATION METALICA DE MATAMOROS

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas, Brownsville

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ON PETITION FOR REHEARING

(Filed January 29, 1996)

Before REAVLEY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is DENIED.

ENTERED FOR THE COURT:

/s/ Rhesa H. Barksdale
United States Circuit Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DANIEL HERNANDEZ, ROSA PALACIOS, RUMALDO HERNANDEZ, AND SYLVIA HERNANDEZ (INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MARIA SOLEDAD SILVA)	*	NO. B-91-202
VS.	*	
MELTON TRUCK LINES, INC., AND FABRICACION METALICA DE MATAMOROS	*	

CERTIFICATION OF ORDER FOR INTERLOCUTORY APPEAL

(Filed Nov. 7, 1994)

On November 24, 1993, the Court denied the motion to dismiss for want of personal jurisdiction filed by Fabricacion Metalica De Matamoros, S.A. De C.V.

In the Court's opinion, the Court's November 24, 1993 Order involves a controlling issue of law as to which there is a substantial ground for difference of opinion and an immediate appeal from the November 24, 1993 Order may materially advance the ultimate termination of this litigation.

SIGNED ON THIS 7th DAY OF November, 1994

/s/ Filemon B. Vela
FILEMON B. VELA
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DANIEL HERNANDEZ, et al Plaintiff,	§ § §	
VS.	§	CIVIL ACTION
MELTON TRUCK LINES, et al	§	B-91-202
Defendant.	§ §	

ORDER

(Filed Nov. 24, 1993)

Before the Court is the Defendant Fabrication Metalica De Matamoros' Motion to Dismiss for lack of Subject Matter Jurisdiction and Plaintiffs' response thereto.

A Court may invoke personal jurisdiction over a non-resident defendant in a diversity suit to the extent permitted by the laws of the forum state, provided however that those laws do not exceed constitutional due process. *Command-Aire v. Ontario Mechanical Sales Service*, 963 F.2d 90 (5th Cir. 1992). The Texas Long Arm statute, *Tex. Civ. Prac. & Rem. Code Ann* §§ 17.041-17.045, provides that there is personal jurisdiction over non-residents who do business within the state. The statute lists particular acts that constitute "doing business", as well as, providing that 'other acts' may also place a defendant under personal jurisdiction.

In order for a long arm statute to meet Constitutional Due Process considerations it must not exceed the two prong test set out in *Asahi Metal Industry v. Superior Court*

of California, 480 U.S. 102, 107 S.Ct. 1026 (1987). The test requires the following:

> "(1) the defendant purposefully must have established minimum contacts with the forum state, invoking the benefits and protections of the state's laws and therefore, reasonably could anticipate being haled into court there, and (2) the exercise of personal jurisdiction, under the circumstances, must not offend traditional notions of fair play and substantial justice."

Command-Aire, supra at 94 citing, *Asahi Metal Industry v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026 (1987). Further, the court must consider that the minimum contacts may result in one of two types of jurisdiction, general or specific. If the cause of action does not arise out of the defendant's contacts with the forum state, the plaintiffs must demonstrate that the defendant engaged in 'continuous and systematic' contacts with the forum state such that they support the exercise of general jurisdiction over the defendant. *Id.* at 94 citing, *Dalton v. R & W Marine, Inc.*, 897 F.2d 1359, 1361-62. Such a showing is not necessary where the cause of action arises out of the defendant's purposeful contacts with the forum state. In that case minimum contacts are said to exist and the court may exercise its' [sic] specific jurisdiction. *Id.* Even a single, substantial act directed toward the forum state can support specific jurisdiction. *Id.*

Upon a finding of minimum contacts the Court must then look to the second prong of the test in *Asahi Metal Industry* and determine whether or not the exercise of personal jurisdiction over the non-resident defendant offends traditional notions of fair play and substantial

justice. This determination requires an examination of the burden on the defendant, the interest of the forum state, the plaintiff's interest in obtaining relief, and the shared interest of the several states in furthering fundamental social policies. *Id.* at 95 citing, *Asahi Metal Industry Co.*, supra.

In the case before the Court the Plaintiffs have established, via discovery on file, that the defendant has at the very least minimum contacts with the forum state.[1] The cause of action as asserted by the Plaintiffs in this case arises from these minimum contacts such that it establishes specific jurisdiction over the matters alleged in the Plaintiff's petition. Additionally, the exercise of personal jurisdiction in this case does not offend traditional notions of fair play and substantial justice. The burden on the defendant in this case will be minimal due [sic] his proximity to the forum state and the injuries as alleged by the plaintiffs in this case demonstrate the plaintiff's interest in obtaining relief.

After consideration of pleadings, relevant case and statutory law, and discovery on file it is the opinion of this Court that there are sufficient 'minimum contacts' to invoke the Court's 'specific jurisdiction' and that this exercise of jurisdiction does not violate constitutional due process. Therefore the Defendant's Motion to Dismiss is hereby DENIED.

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[1] These contacts as evidenced by requests for admissions include manufacturing parts which were shiped [sic] through the state of Texas, contacting companies in Texas to manufacture parts, and soliciting and conducting business in the United States.

DONE at Brownsville, Texas this 24th day of November, 1993.

/s/ Filemon B. Vela
FILEMON B. VELA
United States
District Judge